

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

DAMEN D. RABB,

Plaintiff,

v.

ESTEVEN FIGUEROA, et al.,

Defendants.

Case No. 1:23-cv-0843 JLT SAB (PC)

**ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS DENYING  
PLAINTIFF'S MOTION FOR SUMMARY  
JUDGMENT**

(Docs. 30, 31)

Isaiah J. Petillo seeks to hold the defendants, both correctional officers at Kern Valley State Prison, liable for violations of his civil rights action filed pursuant to 42 U.S.C. § 1983. (*See generally* Doc. 1.) Plaintiff filed a motion for summary judgment relating to exhaustion of the administrative remedies under the Prison Litigation Reform Act. (Doc. 30.) The magistrate judge recommended that Plaintiff's motion for summary judgment be denied, after finding that Plaintiff "is not required to plead and/or prove exhaustion of the administrative remedies because it is an affirmative defense." (Doc. 31 at 1-2.)

The Court served the Findings and Recommendations on the parties and notified them that any objections were due within 14 days. (Doc. 31 at 3.) The Court advised Plaintiff the "failure to file objections within the specified time may result in the waiver of rights on appeal." (*Id.*, citing *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014).) Plaintiff did not file objections and the time to do so has passed.

1 According to 28 U.S.C. § 636(b)(1)(C), this Court performed a *de novo* review of this  
2 case. Having carefully reviewed the matter, the Court concludes the Findings and  
3 Recommendations are supported by the record and proper analysis. Thus, the Court **ORDERS**:

- 4 1. The Findings and Recommendations issued on February 20, 2024 (Doc. 31) are  
5 **ADOPTED** in full.
- 6 2. Plaintiff's motion for summary judgment (Doc. 30) is **DENIED**.

7  
8 IT IS SO ORDERED.

9 Dated: **March 19, 2024**

  
UNITED STATES DISTRICT JUDGE